

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 385
(FREEMAN DECORATING SERVICES, INC.)

and

Case 12-CB-208733

DORIS CARABALLO, an Individual

**COUNSEL FOR THE GENERAL COUNSEL'S
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits the following Exceptions to the Decision of Administrative Law Judge Christine E. Dibble (ALJ or ALJ Dibble) in the above-captioned case:

1. The ALJ erred by failing to find that of the approximately 9,000 individuals who are represented by International Brotherhood of Teamsters, Local 385 (Respondent) for the purposes of collective bargaining, only between 150 and 300 are active registered users of its convention industry referral list. [ALJD 2:27-29]¹.
2. The ALJ erred by finding that Respondent has between 53 and 55 collective bargaining agreements with various employers covering employees who work at the site of specific events "show sites." [ALJD 2:29-31].
3. The ALJ erred by failing to find that Respondent has about four collective bargaining agreements with regular employers involving "showsite" and "warehouse" work in the convention industry. [ALJD 2:29-31].

¹ ALJ Dibble's December 19, 2019 Decision is referenced herein as ALJD (page:line).

4. The ALJ erred by mischaracterizing the nature of Respondent's hiring hall referral system as being "with Freeman" and a "month-to-month rotational system." [ALJD 3:4-5].

5. The ALJ erred by failing to find that Respondent's operation of its rotation-based referral list applies to all convention industry employers (of which there are at least three, including Freeman). [ALJD 3:4-5].

6. The ALJ erred by failing to find that Freeman submits labor requests to Respondent that sometimes display the names of priority list workers contacted by Freeman. [ALJD 3:16-17].

7. The ALJ erred by failing to find that another convention-industry employer, Shepard, is entitled to request referents by name, whom Respondent will contact and process in TITAN without using its regular referral rotation. [ALJD 3:16-17].

8. The ALJ erred by finding that Respondent's referral list application packet includes "a checkoff authorization form for members to authorize deduction of their membership [sic] from their paycheck and remitted to the Respondent by Freeman." [ALJD 3:19-21].

9. The ALJ erred by failing to find that Respondent's referral list application packet includes the hiring hall application form, a W-4 form, an I-9 form, the instruction forms for the W-4 and the I-9, and two optional forms--a "white" card for members can use to elect to have Freeman withhold and remit monthly membership dues via payroll deduction, and a "blue" card for non-members to use to elect to have Freeman withhold and remit their monthly referral hall fees. [ALJD 3:19-21, 4:1-4].

10. The ALJ erred by failing to find that in the event a referent is eligible to be on the referral list because they have paid their dues through the month the list was printed, Respondent does not later revoke an extended referral if the referent fails to pay dues/referral fees by the first of the next month, when the work occurs. [ALJD 3:19-31].

11. The ALJ erred by finding that “Fee payment allows the referent to appear on a referral list generated that month, and to be referred during any subsequent month.” [ALJD 3:23-24, 3:3:26-29, 5:4-6].

12. The ALJ erred by failing to find that hiring hall users who make payments after the 1st of a given month will not be called by Respondent for work referrals between their date of payment and the date Respondent prints a new referral list, even though they are eligible for referral, unless Grajales manually adds their name to an existing list herself. [ALJD 3:28-31, 4 fn. 6, 5:14-22].

13. The ALJ erred by finding that “[t]here are no penalties for a late or delinquent payment.” [ALJD 3:32-33].

14. The ALJ erred by failing to find that hiring hall users do not incur additional financial obligations to Respondent for late or delinquent payment of hiring hall fees, and that a payment made in any given month will be applied to that month first, with any additional monies received at the same time are applied to future months. [ALJD 3:32-33].

15. The ALJ erred by failing to find that late payment of dues does not relegate the referent to the bottom of the rotation-based list. [ALJD 3:32-33].

16. The ALJ erred by finding that “[t]he referral rules include a statement that dues or fee payments are a personal responsibility, regardless whether a person makes payment via checkoff.” [ALJD 3:38-40]

17. The ALJ erred by failing to find that the referral rules state that “Individuals must pay their dues or referral fee(s) to the Local Union by the last business day of each month during normal working hours and will not be referred until dues/fee(s) are paid for that month.” [ALJD 3:38-40].

18. The ALJ erred by finding that “[n]onmembers who agree to checkoff receive a ‘blue card,’” and that “Union members who agree to checkoff receive a ‘white card.’” [ALJD 4:3-4].

19. The ALJ erred by finding that “Respondent uses a computerized systems [sic], TITAN... [that] calculates dues and fee payment status based on a preprogrammed algorithm.” [ALJD 4:38-5:1].

20. The ALJ erred by failing to find that TITAN is a computerized database and, as such, stores categorized, catalogued information and can generate reports about the information stored in it using various query parameters, and that “dues and fee payment status” is one category of information maintained in the database that can be searched or used as a query parameter for other functions, such as generating a referral list. [ALJD 4:38-5:1].

21. The ALJ erred by failing to find that Respondent receives notice of the completion of a work assignment from either Freeman or the job steward, and then manually records a termination date in TITAN, which is not necessarily the actual last day worked by the referent. [ALJD 5:1-7].

22. The ALJ erred by failing to find that when referents finish assignments, they are not returned to the rotation list until their termination date is manually recorded by a hiring hall TITAN operator, thus producing an “SI date.” [ALJD 5:1-7].

23. The ALJ erred by finding that “[w]hen the referent finishes an assignment, the person is automatically placed at the end of the rotation.” [ALJD 5:6-7].

24. The ALJ erred by failing to find that referral hall administrator Nidia Grajales (Grajales) did not have an explanation for why she writes the word “dues” on the referral sheet next to the names of hiring hall users who are current on their dues in the month the list was printed but are not paid in advance for the month in which the work actually occurs. [ALJD 5:14-22].

25. The ALJ erred by failing to find that Grajales makes notations on the call list regarding her attempts to contact referents and the ultimate work assignment made, if any. [ALJD 5:14-22].

26. The ALJ erred by failing to find that Grajales manually inserts referents' names onto the referral list. [ALJD 5:14-22].

27. The ALJ erred by finding that Grajales "makes notations on the referral list indicating when Freeman remits dues to the Respondent via checkoff." [ALJD 5:19-20].

28. The ALJ erred by failing to find that when Grajales makes a handwritten notation, "pd.," "pd. [date]," or by striking through and amending the date appearing in the "PD thru" column of the printed referral call list, it is because the referent made a payment in person, not via dues checkoff, after the list was printed. [ALJD 5:19-20].

29. The ALJ erred by failing to find that the Charging Party, Doris Caraballo (Caraballo) did not perform any work for Freeman in July or August 2017.² [ALJD 6:8-10].

30. The ALJ erred by failing to find that Caraballo and the other "comparators" were given an SI date of October 26 after the conclusion of the Genetics show, even though their last day of work was October 21. [ALJD 6:21-28].

31. The ALJ erred by failing to find that Respondent generated a referral list on October 26. [ALJD 6:21-28].

32. The ALJ erred by failing to find that Alex Santiago did not appear on the referral list for the "IAPPA" show because he was in arrears on his dues but was nonetheless referred to work for Freeman on that show. [ALJD 6:30-37, 11:23-25].

² All dates hereinafter are 2017 unless otherwise noted.

33. The ALJ erred by failing to find that the comparators who worked on the “IAPPA” show were given an “SI date” of November 21 after the conclusion of that work assignment. [ALJD 6:35-7:15].

34. The ALJ erred by failing to find that Respondent did not call Caraballo with any work referrals for Freeman in the entire month of November. [ALJD 7:13-14].

35. The ALJ erred by failing to find that Respondent gave Caraballo an “SI date” of December 18, 2017. [ALJD 7:15-25].

36. The ALJ erred by failing to find that Respondent did not call Caraballo with any work referrals for Freeman until December 18. [ALJD 7:20-24].

37. The ALJ erred by failing to find that Caraballo’s comparators Pedro Osorio and Nina Thomas worked general labor on the “National Forum on Quality Improvement” show on December 9, 11, and 13; Alex Santiago worked forklift on the “Composites Advanced Materials” show on December 14 and 15; and Diana Millan and Hector Velez worked general labor on the Composites show on December 15. [ALJD 7:20-25].

38. The ALJ erred by failing to find that Respondent used two call sheets, both generated on December 18, for the “Homebuilder” show referrals. [ALJD 7:20-25].

39. The ALJ erred by failing to find that Respondent printed the call list in evidence as General Counsel Exhibit 11(b) first, and the call list in evidence as General Counsel Exhibit 11(a) second. [ALJD 7:20-25].

40. The ALJ erred by failing to find that comparators Christopher Cobb, Isabel Hernandez, Pedro Osorio, Alba Palomino, Matthew Rausch, Alex Santiago, and Nina Thomas, all had “SI dates” of November 21 on the call list in evidence as General Counsel Exhibit 11(b). [ALJD 7:20-25].

41. The ALJ erred by failing to find that Caraballo and comparators Maxo Estinvil, Diana Millan, and Hector Velez were not on the call list in evidence as General Counsel Exhibit 11(b). [ALJD 7:20-25].

42. The ALJ erred by failing to find that Caraballo and comparators Maxo Estinvil, Pedro Osorio, Nina Thomas, and Hector Velez were all given “SI dates” of December 18 on the call list in evidence as General Counsel’s Exhibit 11(a). [ALJD 7:20-25].

43. The ALJ erred by failing to find that comparators Christopher Cobb, Isabel Hernandez, Alba Palomino, Matthew Rausch, and Alex Santiago retained “SI dates” of November 21 on the call list in evidence as General Counsel’s Exhibit 11(a). [ALJD 7:20-25].

44. The ALJ erred by failing to find that comparator Isabel Hernandez was referred to work to begin on December 30. [ALJD 7:20-25].

45. The ALJ erred by failing to consider *Carpenters Local 573*, 272 NLRB 1249 (1984), or otherwise adequately analyze the “fiduciary duty” theory presented by Counsel for the General Counsel. [ALJD 7:31-12:10].

46. The ALJ erred by citing three inapposite and non-binding precedents from U.S. Circuit Court of Appeals decisions, *Radio-Electronics Officers Union v. NLRB*, 16 F.3d 1280, 1284-1285 (D.C. Cir. 1994), *Glaziers Local Union 558 v. NLRB*, 787 F.2d 1406, 1414-1416 (10th Cir. 1986), and *Road Sprinkler Filters Local Union No. 699 v. NLRB*, 778 F.2d 8 (D.C. Cir. 1985), in support of her conclusion that Respondent did not violate the Act. [ALJD 8:42-9:2, 9:25-31].

47. The ALJ erred by characterizing the basis of the complaint as “implementation of [Respondent’s] rule which authorizes the Respondent to refuse to refer a referral hall user for work until he or she has satisfied unpaid dues or referral fees,” while omitting the critical element of the allegation: that Respondent is obligated to notify referents of a lapse in dues – especially in the

circumstances where the employee's dues have already been withheld by a contracting Employer – and give them an opportunity to rectify the deficiency before denying them the opportunity to work. [ALJD 9:14-16].

48. The ALJ erred by concluding that there was “no credible evidence that the Respondent routinely veered from its long-standing practice of using an automatic computerized system to determine referents’ place[s] on referral lists.” [ALJD 9:25-27].

49. The ALJ erred by concluding that “[d]espite this human intervention in TITAN, there is no evidence that the Respondent routinely deviated from its long-standing procedure for placing referents on the referral on a rotational basis automatically generated by TITAN.” [ALJD 9:42-45].

50. The ALJ erred by concluding that “[w]hile Grajales and Stapleton’s actions may lend themselves to abuse, they are not unlawful per se.” [ALJD 10:1-2].

51. The ALJ erred by concluding that Grajales and Stapleton used non-discriminatorily-applied “subjective criteria” in their administration of the referral hall. [ALJD 10:1-4].

52. The ALJ erred by rejecting the General Counsel’s well-reasoned argument that TITAN queries can be modified so that it would take only “slightly more time than it does at present” for Respondent to make its referral calls and satisfy its obligation to notify hiring hall users in the first instance of their lapsed dues or referral fees. [ALJD 10:43-11:19].

53. The ALJ erred by relying on the General Counsel’s failure to explicitly define what constitutes a “reasonable amount of time” in describing how Respondent can fulfill its fiduciary duty without unduly disrupting its operations as a basis for concluding that Respondent did not violate the Act as alleged. [ALJD 11:15-19].

54. The ALJ erred by concluding that Respondent's referral system is "implemented in a uniform and unbiased manner; and there is no substantial evidence that Respondent implemented its rule in bad faith or for arbitrary reasons." [ALJD 11:21-23].

55. The ALJ erred by finding that Alex Santiago was a Freeman "priority list" employee, mistakenly conflating him with another individual, Ruben Santiago, and thereby concluding as a matter of law that Alex Santiago was not a similarly-situated comparator of Caraballo. [ALJD 11:23-26, 11:37-43, 12:5-6].

56. The ALJ erred by concluding that Respondent had established a "necessity defense" to the alleged violation. [ALJD 12:8-10].

57. The ALJ erred by concluding that Respondent did not violate Section 8(b)(1)(A) and (2) of the Act by denying Caraballo work opportunities in November and December 2017 on the basis of unpaid dues/referral fees without first providing her notice of the deficiency and the opportunity to make a payment, and thus recommending dismissal of the complaint. [ALJD 12:8-10].

Dated: January 24, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2019, I electronically filed the foregoing **Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge** and served said document by electronic mail on the below-named parties, as follows:

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